

MEMORANDUM

Office of the Fire Marshal



To: Bill Weisgerber, Fire Chief
From: Patricia Joki, Fire Marshal *PJoki*
Subject: Reimbursement of Costs to Fire Department
Date: October 15, 2003

Attached is a memo written by City Staff to address issues raised by Mr. Hassan at a past council meeting. At the bottom of page two of the memo under "Status of temporary certificate of occupancy condition #3", the Fire department addresses the issue of reimbursement for costs spent for board-up, as well as staff's efforts to assist Mr. Hassan in opening and operating his new business.

MEMORANDUM



To: Honorable Mayor and City Council

Through: Thomas J. Wilson, City Manager

From: ~~For~~ Edgar F. Rodriguez, Chief Building Official *Edgar F. Rodriguez*
Tambri Heyden, Director of Planning and Neighborhood Services *Tambri Heyden*
Patricia Joki, Fire Marshal *Patricia Joki*
Mike McNeely, City Engineer *Mike McNeely*

Subject: Ola's Corner (formerly known as Campbell's Corner) and Ola's Exotic Coffee – 167 and 187 S. Main St.

Date: August 28, 2003

Purpose of memorandum

At the August 19, 2003 City Council meeting, Mr. Ola Hassan addressed the Council during Citizen's Forum. Mr. Hassan stated that he hoped to address the Council in the future regarding a request he had made to the City the day before the Council meeting. The reason behind Mr. Hassan's address to Council relates to the upcoming, October 18, 2003 expiration of his 6 month temporary certificate of occupancy.

Background related to Mr. Hassan's request

Until now, Mr. Hassan has delayed progress on satisfying the conditions of his temporary certificate of occupancy, primarily due to his disagreement with the conditions to which he agreed to comply. The temporary certificate of occupancy was issued on April 19, 2003 after staff discovered an advertisement in the *Milpitas Post* advertising the grand opening of Mr. Hassan's coffee shop and restaurant. Given the status of the unfinished construction at that time, the temporary occupancy was granted subject to the following conditions:

1. Obtain approval and construct a roof equipment screen within 6 months of the Temporary Occupancy Permit.
2. Obtain approval and install City required landscaping within 6 months of the Temporary Occupancy Permit.
3. Conform to the agreement between Ola Robert Hassan and the City of Milpitas, dated 4/18/2003. (Copy of the agreement is attached)

Status of temporary certificate of occupancy condition #1 (rooftop equipment screening):

Screening of rooftop equipment is a requirement and was specified in the 1998 conditions of approval of the planning/development application for the restaurant. As of last week, Mr. Hassan has submitted an application to request a waiver of the requirement to screen his rooftop equipment. This request will need to be reviewed by the Planning Commission as a change to the original conditions of approval.

Because the building has been formally designated by the City Council as a cultural resource since November 18, 1986, this request needs to be reviewed by the PRCRC and the City Council as well to ensure that the unscreened equipment does not negatively alter the historical significance of the building or to a greater extent than would screening.

Mr. Hassan was informed of the two-month timeframe needed to process such a request given the extra review bodies necessary for approval of changes to local historic buildings. However, the designation has been a sticking point for Mr. Hassan since 1995 when he first proposed conversion of the building's use and was advised how to best make improvements to the dilapidated state of the historic building.

Status of temporary certificate of occupancy condition #2 (landscaping):

Submittal of a revised landscape plan to Planning Commission was a special condition of the 1998 approval of Mr. Hassan's planning application, since minimal landscaping was proposed. In January 23, 2003 a letter was sent to Mr. Hassan advising him of all outstanding items after staff noted that required site improvements were lagging behind the completion of building improvements. After receipt of the letter, Mr. Hassan installed landscaping, however the landscaping had not been approved. Thus, when Mr. Hassan opened for business this past April, the approval of a revised landscaping plan was made a condition of the temporary certificate of occupancy.

Last week Mr. Hassan submitted a revised landscaping plan reflecting the landscaping he installed. The landscaping reflected, however, is substandard compared to the quality and quantity of landscaping proposed and approved for other development sites in the City.

Status of temporary certificate of occupancy condition #3 (Fire Department abatement fees and backflow cage):

The referenced agreement includes conditions 1 and 2 above. In addition, the agreement requires in Section 1C that monies in the sum of \$4,500.00 due to the Fire Department be paid within 3 months of execution of the agreement. This amount reflects the \$4,502.31 dollars spent by the Department in 1999 to abate the unsecured building (Campbell's Corner) when staff found a homeless person living inside and broken (window) glass and garbage around the premises creating a nuisance and public safety hazard. Although a fence surrounded the building, access to it could still be made.

Prior to directing the board-up, staff spoke with Mr. Hassan to explain the situation and requested he board up the property as it presented a public health and safety hazard. It was made clear that his failure to do so would require the City to abate the hazard and to pursue cost recovery for reimbursement. This conversation was documented in a letter dated April 15, 1999. Failure on Mr. Hassan's part resulted in the City ordering the board-up, and to begin the cost recovery process.

Over the past four years, staff has agreed to each of Mr. Hassan's requests to defer payment - from being collected with issuance of a building permit, to collected prior to finalizing the project and allowing occupancy. Letters to Mr. Hassan have documented these agreements each time a request was made. Additionally, staff met with Mr. Hassan four times between February 2003 and April 2003 to discuss payment. In good faith, staff agreed to allow Mr. Hassan's business to open under a temporary certificate of occupancy with the condition of a partial payment prior to occupancy and payment in full within three months (by July 18, 2003).

Mr. Hassan has reneged on the terms of the agreement since the only payment received is the partial payment collected prior to issuing the temporary certificate of occupancy. The outstanding balance due is \$3,500.00. As per the terms in Section 3 of the agreement, if the property owner fails to comply within the time periods set forth, the owner will cease operation of Ola's Corner and Ola's Exotic Coffee. Operations have not ceased.

Section 1A of the agreement stipulated that within 60 days of the agreement a backflow cage shall be installed. The backflow cage has been installed. Engineering inspectors have verified that this agreement condition has been satisfied.

Other points raised by Mr. Hassan

The 1998 special conditions of approval attached to the planning/development application for the coffee shop and the restaurant required construction of various public improvements. These included sidewalk, sewer, water and storm drain connections. These requirements are typical and are imposed on all new development and redevelopment projects.

Between 1998 and 2002, numerous meeting were held to help the applicant (Mr. Hassan) understand the City requirements and also to help his engineer to prepare necessary construction plans. In February 2003, the applicant requested a partial waiver of Private Job (PJ) fees for Engineering and Planning application review charges and requested City participation in the costs of the required sidewalk improvements. Staff determined that the charges were valid, but executed a payment plan for the PJ fees to assist Mr. Hassan in meeting his financial obligation to pay fees that all applicants are required to pay for similar projects. However, staff found no reason for the City to share the costs of the sidewalk which is a standard development requirement. Several additional meetings were again conducted to explain the situation to the applicant to no avail.

Conclusion

Staff has taken extraordinary measures to assist Mr. Hassan through the approval process to convert his building, designated as an historic cultural resource for 17 years, into a restaurant. Staff is concerned that any further assistance requested by Mr. Hassan would represent a dangerous precedent that could encourage other applicants to pursue development activity and building occupancy without permits and inspections. It could also create an expectation among applicants that application review and inspection costs are not the responsibility of the applicant and typical costs associated with development and can be waived.



CITY OF MILPITAS BUILDING INSPECTION DIVISION

TEMPORARY OCCUPANCY PERMIT

BUILDING PERMIT NO: 77450 BAAC OCCUPANCY GROUP: A-3

ISSUED ON: 04/18/2003 EXPIRES ON :10/18/2003

An Occupancy Permit will not be issued until the following conditions have been met.

1. The applicant shall obtain City approval and construct a roof equipment screen within 6 months of the date of this Temporary Occupancy Permit
2. The applicant shall obtain City approval and install City-required landscaping within 6 months of the date of this Temporary Occupancy Permit
3. The applicant shall conform to the Agreement between Ola Robert Hassan and the City of Milpitas, dated 4/18/2003

Any requests for extensions shall be submitted to the City in writing.

SITE ADDRESS: 167 South Main Street BUSINESS NAME: Ola's Corner

BUSINESS OWNER: Ola Robert Hassan SIGNATURE: [Signature] DATE: 4/18/03

BUILDING OFFICIAL: [Signature]

CITY OF MILPITAS AUTHORIZATION

Building Official or Representative: [Signature]

Date: 4-18-03

POST IN A CONSPICUOUS LOCATION
DO NOT REMOVE



CITY OF MILPITAS

Mailing Address: 455 EAST CALAVERAS BOULEVARD, MILPITAS, CALIFORNIA 95035-5479 • www.ci.milpitas.ca.gov

BUILDING INSPECTION DIVISION

AGREEMENT BETWEEN THE CITY OF MILPITAS AND OLA ROBERT HASSAN PERMITTING TEMPORARY DEFERRAL OF CERTAIN CONDITIONS OF APPROVAL

THIS AGREEMENT, dated this 18th day of April 2003, is entered into between the City of Milpitas ("CITY") and Ola Robert Hassan ("OWNER") doing business as Ola's Corner and Ola's Exotic Coffee at 167 S. Main Street, Milpitas, California, 95035.

Recitals

A. OWNER has received land use approvals and building permits for the construction of improvements for a restaurant (the "Approvals") and is currently engaged in completing construction of the restaurant improvements.

B. Among the conditions imposed on the Approvals are conditions requiring construction of a roof screen, installation of a backflow cage, landscape improvements, and payment of funds due the CITY (the "Conditions").

C. Except for the above listed Conditions, OWNER will have completed construction of the improvements consistent with the Approvals.

D. OWNER wishes to temporarily defer completion of the Conditions for the periods listed in the Agreement, after which time, if the Conditions are not complied with, OWNER will cease operations and occupancy and forfeit a total performance deposit of two thousand five hundred dollars (\$2,500.00).

E. CITY, subject to the terms and conditions of this Agreement, is agreeable to permitting the temporary deferral of the Conditions.

AGREEMENT

Section 1. Completion of Improvements. -For the consideration of the CITY's granting of the Approvals and a temporary occupancy permit for the restaurant, OWNER agrees to comply with the following Conditions:

- A. Engineering Department Condition. Within sixty (60) days of the execution of this Agreement, OWNER agrees to install a backflow cage pursuant to the approved plans, complying with all approved special conditions, and obtaining required inspections and final building permit sign-off by the Milpitas Building Inspection Division; (Engineering Department contact: Mehdi Khalla)

- B. Planning Department Conditions. Within six (6) months of the execution of this Agreement, OWNER agrees to obtain the required CITY approvals and permits for landscaping, and install the landscaping pursuant to the approved plans, complying with all approved special conditions, and obtaining required inspections and final building permit sign-off by the Milpitas Building Inspection Division.

OWNER further agrees, within six (6) months of the execution of this Agreement, to obtain the required CITY approvals and permits for a screening mechanism for roof-top equipment (roof screen) pursuant to the approved plans, complying with all special conditions, and obtaining required inspections and final building permit sign-off by the Milpitas Building Inspection Division. (Planning Division contact: Annelise Judd, (408) 586-3273)

- C. Fire Department Conditions. OWNER hereby agrees, within three (3) months of the execution of this Agreement, to pay all funds due the City of Milpitas Fire Department for services rendered. The amount due the Fire Department at the time of execution of this Agreement is approximately four thousand five hundred dollars (\$4,500.00).

OWNER further agrees, within ten (10) days of the execution of this Agreement, to have installed on the main entrance doors of Ola's Corner, and inspected by the Fire Department, approved door hardware meeting the requirements of California Fire Code Section 2501.8.2 Panic Hardware exception 1. Additionally above the main exit there shall be a sign stating "This door must remain unlocked during business hours".

If the above listed Conditions are not completed within the time and as required by the foregoing, OWNER agrees that he will cease operation of Ola's Corner and Ola's Exotic Coffee and cease occupancy of the premises. Should the temporary certificate of occupancy be revoked pursuant to this Section, OWNER hereby agrees that he will not challenge the revocation.


Section 2. Performance Deposit. Concurrent with OWNER's execution of this Agreement, OWNER has provided the CITY with a one thousand dollar (\$1,000.00) performance security deposit. CITY acknowledges that OWNER has previously posted a faithful performance deposit of one thousand five hundred dollars (\$1,500.00) for the construction of a roof screen and landscape improvements pursuant to Section 1B of this Agreement. The total deposit provided by OWNER to CITY is two thousand five hundred dollars (\$2,500.00) (the "Deposit").

Should OWNER fail to comply with the requirements of Section 1, it shall forfeit the Deposit to the CITY. The CITY may, but shall not be required to complete, or cause to be completed, the requirements of Section 1. If CITY elects to complete the requirements of Section 1, upon completion, OWNER may request an occupancy permit from the CITY.


Section 3. **Issuance of Temporary Certificate of Occupancy.** Provided all other conditions of the Approvals are met and the improvements comply with all other local, state, and federal regulations, the CITY will permit OWNER to defer the requirements of Section 1 and will issue OWNER a temporary certificate of occupancy under City of Milpitas Municipal Code Section 11-1-25.04. Should OWNER fail to comply with the requirements of Section 1 within the time periods set forth in Section 1, OWNER agrees to cease operations of Ola's Corner and Ola's Exotic Coffee and forfeit the Deposit.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date and year first above written.

CITY OF MILPITAS


Edgar F. Rodriguez, P.E.
Chief Building Official

OLA'S CORNER
OLA'S EXOTIC COFFEE


Ola Robert Hassan
Owner